IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

PREM CHAND CHAUHAN VS. RSRTC & ANR.

S.B.CIVIL WRIT PETITION NO.4150/2001 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 25th July, 2006

PRESENT

REPORTABLE

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.M.R. Singhvi, Advocate for the petitioner.
Mr.Sangeet Lodha, Advocate for the respondents.

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Under challenge in the present writ petition is the order dated 16.10.2001 passed by the respondents whereby retireing the petitioner compulsorily in exercise of their powers under Clause 18D(1) of the Rajasthan Road Transport Workers & Workshop Employees Standing Orders, 1965 (for short 'the standing orders').

The facts in brief of the case are that petitioner was

appointed as Conductor by order dated 4.4.74 in the pay scale of Rs.90-150. He was thereafter, promoted to the post of Asstt. Traffic Inspector w.e.f. 16.9.1988 vide order dated 30.5.1996 passed by the Executive Director (Traffic), RSRTC, Jodhpur. Thereafter, vide order dated 30.10.3000 he was again on the recommendations of duly constituted departmental authorities promoted to the post of Traffic Inspector in the pay scale of Rs.5000-8000 against the vacancies pertaining to the year 2000-2001. The petitioner has stated that he was issued appreciation letter by Executive Director (Traffic) on 9.7.2001, which he has annexed as Annex.3. It has been stated that there were no adverse remarks in his ACRs. It is stated that he has not faced any disciplinary proceedings while holding the post of Asstt. Traffic Inspector, although, certain penalties were imposed upon him in the earlier beginning of his service carrier but thereafter, the respondents have always appreciated his work and he has discharged his duties with efficiency, honesty and dedication. In recognition of his merit, the respondents have promoted him not once but twice. The order of his compulsory retirement was passed on 16.10.2001. The petitioner has stated that even though Clause 18D(1) of the Standing Orders, 1965 empowers the Corporation to retire an employee on attaining the age of 50 years or on the date he completes 25 years of service whichever is earlier if retention of the employee is not in the interest of the

corporation. However, Clause 18D(1) of the Standing Orders, 1965 itself is unjust and arbitrary as it empowers the employer with absolutely unguided, unbridled and un-channelled powers to retire an employee, therefore, the same is ultra vires to Articles 14 and 16 of the Constitution of India and deserves to be declared unconstitutional. Alternatively, it has been submitted that there is no foundation for holding that retention of the petitioner up till the age of his superannuation is not in the interest of corporation. The employment is valuable right of the petitioner and this cannot be snatched away by the employer without giving just and proper reason. The normal age of retirement is 58 years and this term can be reduced only in the event of imposition of punishment of removal or dismissal or by simple discharge in accordance with the provisions of Industrial Disputes Act, 1947. In the case of the petitioner , invocation of this provision was nothing, but a colourable exercise of powers. It has also been argued that since the petitioner was appointed as Conductor on 4.4.74, therefore, he completed 25 years of service on 4.4.1999. As per the provision contained in Clause 18D(1) of the Standing Order, 1965, the petitioner could have been retired compulsorily from the service of the Corporation on 4.4.99 and the respondents having failed to exercise that power soon thereafter could now exercise such power only after the petitioner attained the age of 50 years. It has been stated that

when respondents themselves after consideration of the service record of the petitioner, granted him two promotions in quick session in the past five years immediately preceding of the date of his compulsorily retirement, the petitioner could not be chopped of service by castigating him as inefficient employee or a dead wood. It is, therefore, prayed that the order dated 16.10.2001 retiring petitioner compulsorily from the service may be quashed and set aside and petitioner be awarded all consequential benefits and further it has been prayed that Clause 18D(1) of the Standing Orders, 1965 may be declared ultra vires to the Articles 14 and 16 of the Constitution of India.

The present writ petition has been contested by the respondents, who have filed detailed reply thereto. In the reply, the respondents have raised preliminary objection about the maintainability of the present writ petition. It has been stated that the controversy raised in the present writ petition would lie within the scope of a dispute or difference between an employee and a workman, which is an industrial dispute and the only remedy available to the petitioner was to approach the forum created under the Industrial Disputes Act, 1947. On merits of the case, it has been denied that there is no foundation for holding that the retention of the petitioner in service was not in the interest of the Corporation. The order of compulsory

retirement of the petitioner from service has not been passed as a punishment. The order of compulsory retirement can always be passed by the competent authority on the basis of subjective satisfaction formed by him that retention of the employee is not in the interest of the Corporation on the basis of his service record. Number of punishments were imposed on the petitioner during his service period and the petitioner has not disclosed these important facts. The respondents in their reply have given a chart to show the adversity with which the petitioner suffered when he was working as Conductor, which is reproduced hereinbelow: -

Charge sheet No. & Date	Gist of Charge	No. & Date of Punishment	Details of penalties Imposed.
1970/ 20.8.75	2 passengers without ticket	2147/ 15.9.1975	Withholding of 1 annual grade increment with cumulative effect.
-	2 passengers do	1350/ 5.8.76	(1) do - (2) Warning to be careful in future. (3) penalty of Rs.50/-
722/ 16.4.77	71/2 passengers	1878/ 20.8.77	(1) withholding of 2 – do- (2) Forfeiture of wages during period of suspension
1618/ 30.9.78	2 passengers 6 passengers 2 drums of milk without ticket	328/ 22.4.80	(1) -do- (2) -do- (3) last warning
466/ 10.4.78	6 passengers without ticket	450/ 18.6.80	(1) withholding of 1 annual grade increment with cumulative effect.

It has been submitted that while passing an order of compulsory retirement, the competent authority has to assess over all service record of the employees and if the authority forms a subjective opinion that the retention of the such an employee is not in the interest of Corporation, then it has every right to pass the order of compulsory retirement.

It has been denied that the provision of Clause 18D(1) of the Standing Orders, 1965 are ultra vires to Articles 14 and 16 of the Constitution of India. It has been denied that the said provision confers unguided, unbridled and un-channelled powers in the hands of the competent authority. The order of compulsory retirement is not a punishment and, therefore, it does not inflict any stigma. It merely enable an employer to chop off the dead wood and inefficient employee so that the post occupied by such employee may be manned by more efficient and dynamic person. While forming the subjective satisfaction on the question of compulsory retirement, the competent authority can take into consideration the entire service record of the employee concerned. Since the clause 18D(1) of the Standing Order, 1965 contains inbuilt guidelines and that power to retire compulsorily can be invoked only if an employee has attained the age of 50 years or has completed 25 years' of

service and the competent authority forms the opinion that it is in the interest of the Corporation to retire such employee from service, it is argued that clause 18D(1) confers unguided, unbridled and un-channelled powers so as to make the provision ultra vires of Article 14 and 16 of the Constitution of India. Merely because the competent authority did not exercise the power to compulsorily retire the petitioner soon upon completion of 25 years of his service, it is not divested its power to retire him compulsorily later as the clause 18D(1) of the Standing Orders, 1965 also clearly shows that the Corporation shall have absolute right to retire any employee after he has attained the age of 50 years or on the date he completes 25 years of service or on any date thereafter. As regards promotion granted to the petitioner, it has been submitted that such promotions were accorded on the basis of seniority-cum-merit, which does not involve comparative assessment of merit of the employee. In the case of promotion, the record of only previous seven years is required to be looked into whereas entire service record of the employee is scrutinized while arriving at the subjective satisfaction to retire an employee compulsorily. It has therefore, prayed that the writ petition filed by the petitioner may be dismissed.

I have heard Shri M.R. Singhvi learned counsel for the

petitioner and Shri Sangeet Lodha learned counsel for the respondent and examined the record.

Shri M.R. Singhvi learned counsel for the petitioner has argued that the clause 18D(1) of the Standing Orders, 1965 confers unguided, unbridled and un-channelled powers to the competent authority to compulsorily retire an employee. Neither any guideline, nor any safeguards have been given in this provision leaving a scope for the authority to arbitrarily exercise such powers on the basis of pick and choose. Therefore, the said clause is therefore, arbitrary and ultra vires to the provisions of Article 14 and 16 of the Constitution of India and the same is liable to be declared unconstitutional. He has argued that the very fact that the petitioner was granted two promotions in the immediate past five years goes to show that the action of the respondents in retiring the petitioner compulsorily suffers from vice of colourable exercise of power. The aforesaid clause does not give power to the competent authority to invoke such powers according to its whims. The material produced by the respondents before the court pertains to a spell of four years of his service i.e., from 1975 to 1978, which was when the petitioner had just began his service carrier. It has been argued that petitioner was initially appointed on the post of Conductor by order dated 4.4.74 and last of the penalty/adversity which the

respondents have brought on record was penalty of imposing one grade increment with cumulative effect, which was imposed on 18.6.80, charge-sheet of which was issued on 10.4.78 and after 1978, neither a single disciplinary proceeding was initiated against the petitioner nor any adverse marks were recorded in his APARs. Keeping in view his unblemished service record, he was granted two promotions in quick session. While he was promoted on the post of Asstt Traffic Inspector by order dated 30.5.96, which promotion was made effective form 16.9.88, he was subsequently, promoted on the post of Traffic Inspector by order dated 30.10.2000. Surprisingly enough, immediately after granting second promotion on 30.10.2000, the respondents in a period of less than one year retired him compulsorily vide order dated 16.10.2001. He argued that there was no material with the respondents to arrive at the conclusion that the petitioner was so inefficient that he had completely lost his utility in service. Action of the respondents in giving pre-mature retirement to the petitioner was nothing but arbitrary and colourable exercise of power as no reasonable person on available material could come to such a decision.

Learned counsel for the petitioner cited a celebrated case of Baikuntha Nath & Anr. Vs. Chief District Medical Officer, Baripada & Anr reported in AIR 1992 SC 1020 for the proposition

that the order of compulsory retirement has to be passed on forming the opinion that it is in the public interest to retire a Government servant compulsorily and such order is based on the subjective satisfaction of the Government. The competent authority should form an opinion on totality of consideration of entire record, but in particular attaching more importance to later period of the service of the concerned Government servant. This judgment was also relied upon by learned counsel for the petitioner for the proposition that in making judicial scrutiny of the order of the compulsory retirement, this court can interfere, if it finds that such order is based on no evidence or it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material or in other words, it is found to be a perverse order and further if a Government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting. The Hon'ble Supreme Court in the said judgment enunciated the following principles of law on the concept of compulsory retirement: -

> "They would form an opinion on a totality of consideration of the entire record –including representations, if any, made by the government servant against the above remarks – of course attaching more importance to later period of his service. Another circumstance to be borne in mind is the unlikelihood of succession of officers making unfounded remarks against a government servant."

Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of M.S. Bindra Vs. Union of India & Ors. reported in AIR 1998 SC 3058. In para no.11 of their Lordships held as under: -

> "11. Therefore, judicial scrutiny of any order imposing premature compulsory retirement is permissible if the order either arbitrary or malafide or if it is based on no evidence. The observation that principles of natural justice have no place in the context of compulsory retirement does not mean that if the version of the delinquent officer is necessary to reach the correct conclusion the same can be obviated on the assumption that other materials alone need be looked into. "

Learned counsel also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of K. Mandaswamy Vs. Union of India & Anr. reported in (1995) 6 SCC 162, wherein Hon'ble Supreme Court in para no.9 while considering the case of S. Ramachandra Raju Vs. State of Orrisa reported in 1994 Supp. (3) SCC 424, observed as under: -

> "10. Higher the ladder the officer scales in the echelons of service, greater should be the transparency of integrity, honesty, character and dedication to duty. Work culture and self-discipline augment his experience. Security of service gives fillip to accelerate assiduity to stay in line and measure up to the expected standards of efficiency

> by the government employee. Thereby, they ultimately aid to achieve excellence in public service. The security of service provided by Article 311 of the Constitution and the statutory rules made under proviso to Article 309 would thus ensure to remove deficiency and incompetence and augment efficiency of public administration. The rights – constitutional or statutory – carry with them corollary duty to maintain efficiency, integrity and dedication to public service. Unfortunately, the latter is being overlooked and neglected and the former unduly gets emphasised. The appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropirate in each case and would form the opinion whether compulsory retirement of a government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power."

Lastly, Shri M.R. Singhvi learned counsel for the petitioner relied upon the judgment of this Court delivered at Jaipur Bench in S.B. Civil Writ Petition No.3352/2002-Hari Dutt Purohit Vs. State of Rajasthan & Anr, decided on 16.10.2002. This was also a case wherein the Executive Manager (CTS) working with the RSRTC was retired compulsorily vide order dated 24th April, 2002. This Court noted that the petitioner was promoted on the post of Asstt. Divisional Manager on the basis of recommendations of DPC vide order dated 8th Nov., 1988. On consideration the material available on record in para no.5 of the judgment, this court observed as under: -

> "After having heard the rival submissions and on a close scrutiny of the reply of the respondent RSRTC as well as the material placed by the petitioner, I am of the view that there was no material on the basis of which a reasonable opinion could be formed that the petitioner had outlived his utility as a public servant or that he had lost his efficiency and had become a dead wood. There being no material before the Chairman RSRTC, in as much as there were no adverse remarks about the integrity of the petitioner in the service record at any time, no conclusion could be drawn that the petitioner was a fit person to be retired compulsorily."

On the other hand, Shri Sangeet Lodha learned counsel for the respondent, while supporting the impugned order of compulsory retirement argued that challenge to clause 18D(1) of the Standing Order, 1965 is misconceived inasmuch as the said clause has got inbuilt guidelines, which has power to retire compulsorily an employee who has attained the age of 50 years or has completed 25 years' of service and the competent authority forms the opinion that it is in the interest of the Corporation to retire such employee from service. In other words, he argued that there is no scope of arbitrary exercise of powers and therefore, it cannot be said that the said provision confers unguided, unbridled and un-channelled powers in the hands of the competent authority. He argued that as many as five penalties in all were imposed upon the petitioner when he was working on the post of Conductor and in all of which, the

charge against him was that he was carrying passengers without ticket. While making order of compulsory retirement, the competent authority has to consider the entire service record of an employee and therefore the penalty imposed on him even during early years of service are bound to reflect on subjective satisfaction arrived at by such authority. He argued that two promotions granted to the petitioner were not based on merit inasmuch as the post on which he was promoted was not selection post and therefore it cannot be said that the effect of earlier adversities would be completely wiped out. If the competent authority has reached the subjective satisfaction that the petitioner has outlived his utility in service, this Court in exercise of its power under Article 226 of the Constitution of India cannot make any interference therein except on the ground that the order was passed malafide or it was based on no evidence whatsoever. Learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court delivered in the case of State of U.P. & Ors. Vs. Vijay Kumar Jain reported in (2002(3 SCC 641, wherein their Lordships in para no.15 observed as under: -

> "15. The aforesaid decisions unmistakably lay down that the entire service record of a government servant could be considered by the Government while exercising the power under FR 56 (c) of the Rules with emphasis on the later entries. FR 56(c) of

> the Rules read with Explanation (2), empowers the State Government with an absolute right to retire an employee on attaining the age of 50 years. It cannot be disputed that the dead wood need to be removed to maintain efficiency in the service. Integrity of a government employee is foremost consideration in public service. If a conduct of a government employee becomes unbecoming to the public interest or obstructs the efficiency in public services, the Government has an absolute right to compulsorily retire such an employee in public interest. The Government's right to compulsorily retire an employee is a method of ensure efficiency in public service and while doing so the Government is entitled under Fundamental Rule 56 to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee. In fact,entire service record, character roll or confidential report furnishes the materials to the Screening Committee or the State Government, as the case may be, to find out whether a government servant has outlived his utility in service. It is on consideration of totality of the materials with emphasis on the later entries in the character roll, the Government is expected to form its opinion whether an employee is to be compulsorily retired or not."

He has also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of State of U.P. & Anr. Vs. Lalsa Ram reported in (2001) 3 SCC 389. In para no.11 of Their Lordships observed as under: -

> "11. The Uttar Pradesh Fundamental Rules governing the service conditions of the respondent herein, in particular, Rules 56(c) & Explanation 2(a), (b) and (c) specially provide that nothing in the Rules should be construed to exclude from consideration any entry relating to any period before a government servant

> was allowed to cross any efficiency bar or he was promoted to any post in an officiating or a substantive capacity or on an ad hoc basis. The important words used are : *nothing herein contained shall be construed to exclude from consideration*: the exclusion thus is prohibited in terms of the rule. The authority concerned, by reason wherefor, has thus a liberty to consider even entries relating to the period before the government servant was allowed to cross any efficiency bar or before he was promoted. It is true that one of the guiding principles as enunciated above in *Baikuntha Nath* case with regard to performance during the later years ought to be attached more importance but that does not exclude the consideration of the entire record of service."

Learned counsel for the respondent also relied upon the judgment of this Court in S.B. Civil Writ Petition No.2267/2000-Bhagwan Sahai Sharma Vs. RSRTC & Ors decided on 31.1.2001, wherein the petitioner while working as a Conductor, was charge-sheeted on various occasions for carrying passengers without tickets in spite of charging fares from them and inquiries against him could not be completed for a long period and, therefore, as a result of compromise in a Lok Adalat, the petitioner who has completed his service of 32 years, was retired compulsorily on attaining the age of 50 years. It has been argued in that case that petitioner' service record had been excellent for last fourteen years and immediately before his compulsory retirement , the petitioner had no adversities. However, the learned Single Judge after analysis of ratio laid

down by the Hon'ble Supreme Court observed as under: -

> "I am of the candid view that settling the matter in such a way amounts to confession and as the said orders have attained finality, there is no reason for not considering the same at the time of assessing the suitability of the petitioner for continuation in service. Thus, it cannot be held to be a case of passing an order on the basis of "no evidence" nor the order can be termed as perverse. In the facts and circumstances, as referred above, the petitioner rendered himself to be a liability on the Corporation and, thus, impugned order cannot be held to be bad in law requiring any interference by this Court."

Learned counsel for the respondent Shri Sangeet Lodha also relied upon judgment of this Court in S.B. Civil Writ Petition No.2342/2001-Jeeya Ram Vs. State of Rajasthan & Ors. decided on 20.2.2003 wherein this Court observed as under: -

> "Thus, in view of the aforesaid settled legal proposition, the law can be summarized that for considering the case of an employee for compulsory retirement, the entire service record is to be examined; even the un-communicated adverse entries can be seen. The vigor and sting of the adverse entries/punishment preceding the promotion on a selection post, i.e. made purely on merit and not on the basis of seniority, would stand washed off if promotion has been made purely on merit and not on seniority. The relevant consideration for the same has to be seen as to whether the employee has become dead-wood and required to be chopped off in public interest."

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and examined the material on record.

At the outset I must begin with considering the validity of clause 18D(1) of the Standing Orders, 1965, which for the facility of reference is reproduced as under: -

> "**Clause 18D(1) – Compulsory Retirement** :
>
> Notwithstanding anything contained in the Regulation, the Corporation may, if is of the opinion that it is in the interest of the Corporation to do so, have the absolute right to retire any Corporation employee after he is attaining the age of 50 years or on the date he completes 25years of service, whichever is earlier or on any date thereafter by giving him three months notice in writing or three months pay and allowances in lieu thereof."

A careful analysis of this clause would make it clear that it contains inbuilt safeguards so as to ensure that it is not misused and the employees are not compulsorily retired at the whims and fancy of the competent authority. Mere use of the word 'absolute right' in the language employed in Clause 18D(1) of the Standing Orders, would not make the provision invalid. The said clause incorporates a check on the powers of the competent authority in compulsorily retiring an employee by providing that power to retire such an employee could be exercised only after

he has attained the age of 50 years or when he completed 25 years of service,whichever is earlier or on any date thereafter.

It thus ensures that the employee concerned, who is being retired compulsorily should have served the Corporation for a reasonably long period and should be otherwise almost nearing to the age of superannuation. This is in keeping with the purpose of compulsory retiring an employee otherwise than by way of guarantee, who has become a dead wood or outlived his utility. A further safeguard has also been provided in the shape of the notice of three months in writing or three months pay and allowance in lieu thereof. The competent authority while exercising such power has to form an opinion that while doing so, it would be in the interest of the Corporation. This again is yet another inbuilt safeguard and the guideline, which the aforesaid clause inheres. This provision is almost analogous to Rule 50 of the Rajasthan Civil Services (Pension) Rules. In the Government service also where the Government servants are compulsorily retired by invoking provisions contained in Rule 50 of the said rules, the Government has been from time to time issuing guidelines by way of administrative instructions and circulars. There is no reason that such course cannot be adopted by the Corporation, though in my view, the provision as it is, contains sufficient inbuilt safeguards to guide the competent

authority. The Corporation can always by issuing of necessary administrative instructions lay down guidelines to be followed by invoking clause 18D(1) of the Standing Orders, 1965. The valid piece of legislation or regulations of the kind in question in the present matter cannot be declared ultra vires of Article 14 and 16 of the Constitution of India merely because there is possibility of its misuse as has been projected on behalf of the petitioner.

I therefore, do not find any merit in the argument advanced by learned counsel for the petitioner in posing challenge to the validity of clause 18D(1) of the Standing Orders, 1965 and hold the same intra vires of Article 14 and 16 of the Constitution of India.

The petitioner in this case was appointed in the service of the respondents as early as on 4.4.74. It appears from the chart referred above that five penalties were imposed upon him in the first four years of his service on the ground that the petitioner while working as Conductor carried certain passengers without tickets. Second of last of the charge-sheet was served upon him on 30th Sept., 1978 in which he was awarded penalty of withholding of two grade increments with cumulative effect and, thereafter, last penalty of withholding of one grade increment

was imposed upon him vide order dated 18.6.1980 in which the charge-sheet was served upon him on 10.4.78. Except these four years of service, the respondents have not brought on record any single incident of disciplinary action taken against the petitioner nor during arguments, learned counsel for the respondent could show that except in four years, any disciplinary action or adversity was there against the petitioner at any point of time thereafter. During the later period, the petitioner has been satisfactorily working with the respondents so much so that the respondents vide order dated 30.5.96 promoted the petitioner on the post of Asstt. Traffic Inspector w.e.f. 16th Sept., 1988 and he was thereafter again promoted vide order dated 30.10.2000 on the post of Traffic Inspector. It would thus be seen that the petitioner was granted two promotions, one 30.5.96 and another on 30.10.2000 within a period of past five years and in less than a year of his last promotion, immediately the impugned order dated 16.10.2001 was passed retiring him compulsorily. The respondents have filed detailed reply to the writ petition and have also filed an additional reply in response to the rejoinder. In the reply to the writ petition, except adversities stated above, they have not been able to give any fact with regard to either the petitioner being subjected to any departmental proceedings beyond the year 1980 or there being any adverse remarks in his APARs. They have however, argued

that in arriving at the subjective satisfaction whether or not to compulsory retire the petitioner, the competent authority was perfectly justified in considering entire service record of the petitioner including the period from 1975 to 1980. During this period, as many as five penalties were imposed upon the petitioner. In these circumstances, it has been argued that it cannot be said that the decision of the competent authority based on no evidence or the action of the respondents was in any manner arbitrary. It is however not denied that even after serving of last charge-sheet on the petitioner on 30.9.78, he had been continuously serving the respondents for 23 years. During this period, no charge-sheet was ever served upon the petitioner nor any other adversities were recorded against him. The period of 23 years, as it is, constitute sufficiently a long period almost equal to the period that qualifies one to be retired compulsorily. It would thus be seen that when the petitioner was given pre-mature retirement by order dated 16.10.2001, he had completed total period of 27 years in the service of the respondents and out of which in later period, i.e., 23 years, there was neither any complaint against him nor was he subjected to any disciplinary action nor was subjected to adverse remarks or penalty, major or minor. When he was retired compulsorily, he had attained the age of 48 years and was still short of 50 years by two years. Not only this, the

respondents firstly promoted him on the post of Asstt. Traffic Inspector vide order dated 30.5.96 and, thereafter, against within four years he was promoted on the post of Traffic Inspector vide order dated 30.10.2000. The respondents may be right in arguing that such promotions were accorded on the basis of seniority-cum-merit, there being no comparative assessment of merit and further while considering the eligibility of candidate, record of the preceding seven years was required to be examined. In the facts of the present case, however, it is to be seen whether the fact that the petitioner had no adversities whatsoever during later 23 years of his entire service carrier of 27 years within last past five years of which, he awarded two promotions, could a reasonable persons still arrive at the conclusion that he had completely outlived his utility to service inasmuch as had become a dead wood so as to be chopped off. This question I am called upon to examine in the light of the law cited by both the learned counsel.

It is trite law that a judgment is an authority what is actually decides and not what can logically be deduced thereform. Conclusions on a question of law arrived at in a particular judgment are always governed and qualified by the particular facts of that case. Keeping in view this principle of law, I have to examine the applicability of the case law cited at

the bar.

The first of judgments in the series of the judgments, which has been relied upon by learned counsel for the parties, which is often quoted judgment on the law relating to compulsory retirement is that of Baikuntha Nath (supra). While analyzing entire major previous case law on the subject, the Hon'ble Supreme Court observed that there is no reason to presume that the competent authority to retire a Government servant will not act bonafide or will not consider the entire record dispassionately. They would form opinion on the totality of consideration of the entire record, of course attaching more importance to later period of his service. In the said judgment, their Lordships formulated five principles of law and one of the principles is that the principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate court, they may interfere if they are satisfied that the order passed (a) malafide, or (b) that it is based on no evidence,or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order. Another principle formulated in the said judgment is that the Government while considering the entire record of the service of the

Government servant concerned, before taking a decision in the matter of course attach more important to record of and performance during the later years. If a government servant is promoted to higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based on merit (selection) and not upon seniority. In the case of M.S. Bindar (supra) in para no.13 of the judgment, similar observations were made by their Lordships that while evaluating materials the reviewing authority should not altogether ignore the reputation which the officer as held till recently. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram on officer with the label of "doubtful integrity". In the case of S. Ramchandra Raju (supra) the Hon'ble Supreme Court observed that the exercise of power of compulsory retirement must not be a haunt on public servant but must act as a check and reasonable measure to ensure

efficiency of service and free from corruption and incompetence. Their Lordships further observed that on consideration of total facts and circumstances, the Government should form an opinion that the Government officers need to be compulsorily retired from service. Therefore, the entire service record more particularly, the latest, would form the foundation for the opinion and furnish the base to exercise the power under the relevant rule to compulsorily retire a government officer. While recording the above observations, the Hon'ble Supreme Court in the case of K. Kandaswamy (supra) further observed that the appropriate Government or the authority would, therefore, need to consider the totality of the facts and circumstances appropriate in each case and would form the opinion whether compulsory retirement of a government employee would be in the public interest. The opinion must be based on the material on record; otherwise it would amount to arbitrary or colourable exercise of power. Similarly in the case of Vijay Kumar Jain (supra) the Hon'ble Supreme Court observed that the Government's right to compulsorily retire such an employee is a method to ensure efficiency in public service and while doing so the government is entitled under Fundamental Rule to take into account the entire service record, character roll or confidential report with emphasis on the later entries in the character roll of an employee.

The Hon'ble Supreme Court in a recent judgment in the case of Pritam Singh VS. Union of India & Ors reported in (2005) 9 SCC 748 observed that the impugned action of compulsorily retiring the appellant from service can be termed as arbitrary only when it is found that no reasonable person could have come to the conclusion that the appellant had outlived his utility as a member of the railway service and had become a dead wood which had to be chopped off.

It is no doubt true that promotions of the petitioner were not merit based but none the less it is a factor that should wight in his favour when considered coupled with the fact that he had a clean and unblemished record of service during 23 years of service immediately preceding the date of his compulsory retirement. In spite of the restricted scope judicial review in matters relating to the compulsory retirement, in the facts of the present case, I am satisfied that no reasonable person could have arrived at a decision to compulsorily retire the petitioner inasmuch as it can be seen that no adversity whatsoever was found in later 23 years of his entire service span of 27 years and therefore it could not be concluded that the petitioner had outlived his utility to the service or had become a dead wood to be chopped off. The decision of the respondents to retire the petitioner compulsorily merely because he had completed 25

years of service, in the facts of the case was an arbitrary and colourable exercise of powers.

In view of what has been discussed above, the present writ petition is allowed. The order of compulsory retirement dated 16.10.2001 is set aside and the respondents are directed to reinstate the petitioner in service with all consequential benefits. Compliance of this order may be made within a period of three months from the date of receipt a copy of this order.

No order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-